IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.735 OF 2005

Shri Ajay Gajanan Kadam .. Appellant

versus

Smt.Shubhangi Ajay Kadam .. Respondent

Mr.K.K.Malpathak for appellant

CORAM : P.V.KAKADE, J.

DATE : 10TH AUGUST, 2005.

P.C.:

1. The appellant has filed the present appeal against the judgment and order passed by Addl. District Judge, Thane dated 20.4.2005 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Thane dated 2.5.2003 decreeing the suit

filed by the wife against the husband for maintenance under Section 18 (1)(2) of the Hindu Adoption and Maintenance Act and directing pay maintenance to the wife at the rate of Rs.2000/= p.m. from the date of passing of the order.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for maintenance and separate residence against the defendant-husband under Section 18 of the Hindu Adoption and Maintenance Act on the ground that she was subjected to cruelty and desertion by the defendant-husband without any sufficient reason, and therefore, she was forced to live separately from him and leave marital home and hence claimed maintenance. The suit was contested by the defendant-husband denying the allegations made by the plaintiff and submitting that he was ever ready to maintain his wife. He also denied the allegations regarding desertion as well as cruelty and sought dismissal of the suit.

. The learned trial judge adjudicated the dispute

on merits and came to the conclusion that the plaintiff had proved that the defendant had treated her with cruelty and deserted and neglected to maintain her and therefore, she was entitled to maintenance and also concluded that under the circumstances the maintenance amount of Rs.2000/= was required to be granted and decreed the suit. The appeal was carried to the District Court. The Addl. District Judge after hearing both the parties concluded that the findings recorded by the trial judge were legal and proper and dismissed the Appeal. Hence the present appeal.

4. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant sought to raise certain grounds against the judgment passed by the lower appellate court. It was submitted that both the courts below have not properly appreciated the evidence in order to come to the conclusion that the plaintiff-respondent was subjected to cruelty and desertion. Perusal of the judgments of both the courts below indeed showed that there was no sufficient and conclusive evidence to establish that the respondent was subjected to physical and mentally torture and

therefore, on that count the lower appellate court's finding appears to be proper. However, the entire factual matrix, as appeared on record, shows that element of desertion is definitely established and therefore, the wife is justified in living separately. It was submitted on behalf of the appellant that the dispute between the parties is not covered by the provision of Section 18 of the Hindu Adoption and Maintenance Act and therefore, decree for maintenance granted under the said provision is not tenable in law. However, I prefer to disagree with this proposition. Sub-section 2 of Section 18 of the said Act indicates various grounds including the ground that Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance, if the husband is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her. This clause also includes that Hindu wife would be entitled for maintenance, if there is any other cause justifying living separately. In my view, the facts involved in this dispute are squarely covered by the aforesaid clauses, and therefore, there is no doubt whatsoever that both the courts below have recorded

concurrent findings in correct and proper manner to the effect that the husband has neglected to maintain his wife, and therefore, the wife is justified in living separately from her husband and as such the decree passed against the appellant appears to be legal and proper and hence no interference is called for by this Court.

. In the result the appeal stands dismissed. Consequently civil application also stands dismissed.